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In the Supreme Court of the United States

OCTOBER TERM, 1963.

No. 410.

KEVIN J. RYAN, *et al.*,
Petitioners,

vs.

WILLIAM J. HIRSCH, SHERIFF,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF FOR RESPONDENT IN OPPOSITION.

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PRELIMINARY STATEMENT.

A few pages should be sufficient without a point by point discussion of the various sections of the petition to demonstrate that the petitioners' contentions are plainly insubstantial and totally without merit, and that this case is not of the type which warrants review by this Court.

REASONS FOR DENIAL OF THE WRIT.

1. Pre-emption Question.

As recently as February 18, 1963, this Court said:

"We held today in *Sociedad Nacional* that the Act does not apply to foreign-registered ships employing alien seamen. * * *"

* * * * *

"* * * The Board's jurisdiction to prevent unfair labor practices, like its jurisdiction to direct elections, is based upon circumstances 'affecting commerce,' and we have concluded that maritime operations of foreign flag-ships employing alien seamen are not in

'commerce' within the meaning of § 2(6), 29 U. S. C. § 152(6)."

Incres Steamship Company, Ltd., vs. International Maritime Workers Union, et al., 372 U. S. 24, 26-27 (1963).

The petition here asks this Court to reconsider the applicability of the National Labor Relations Act to maritime operations of foreign flag-ships employing alien seamen, and repudiate its prior holdings by concluding that such operations are within the Act and under the jurisdiction of the National Labor Relations Board.

It is undisputed in the record below that the contempt charges against the petitioners arose from their alleged violations of a state court temporary injunction issued in an action involving the maritime operations of a Canadian corporation whose ships are registered in Canada under the Canadian law and fly the Canadian flag, and which ships are crewed by Canadian seamen, who in turn are members of and represented by Canadian unions which have entered into collective bargaining agreements with the Canadian shipowner in Canada under the provisions of the Canadian Industrial Relations and Disputes Investigation Act (R. 18, 23-25).

The occasion for the picketing of the Canadian shipowner's ships while in the Port of Toledo is a jurisdictional dispute between the Canadian unions which represent the crews and another Canadian maritime union, Seafarers' International Union of Canada, which is seeking to force the shipowner to breach its contracts with the unions representing the crews and replace the crews with its own members (R. 26). An American union was actually engaged in the picketing at the time of the alleged contempt, but the very picket signs which the pickets carried identified the occasion for the picketing as the jurisdictional dispute between the Canadian unions (R. 42).

In recent years this Court has considered and decided various cases involving the precise contention advanced in the petition, starting with *Benz et al. vs. Compania Naviera Hidalgo, S. A.*, 353 U. S. 138 (1957), and concluding with the *Incres* case, and it will serve no useful purpose or service to the public for this Court to reconsider the question and simply reaffirm the now well-established proposition that the Act simply does not apply to the maritime operations of foreign flag-ships employing alien seamen.

Further, the contention of the petitioners with respect to N. L. R. B. jurisdiction is frivolous as is plainly demonstrated by the fact that the Chicago Regional Office of the N. L. R. B., under the old and now rejected "balancing of contacts" theory, has already declined to assert jurisdiction in the very Canadian jurisdictional dispute involved here, which determination has been affirmed by the Board itself (*Upper Lakes Shipping, Ltd., etc.*, N. L. R. B. Case Nos. 13-CA-4480, 13-CA-4480-2 (1963); *Canadian National Maritime Union, etc.*, Case Nos. 13-CB-1128, 13-CB-1128-2 (1963)).

2. Free Speech and the Right to Protest.

In an endeavor to catch the attention of this Court, the petitioners have characterized the picketing in which they were engaged as peaceful and but the exercise of free speech and the right to protest.

It was charged in the trial court that the picketing was unlawful because its purpose was to force, coerce and induce the Canadian shipowner to breach its existing collective bargaining agreements with the several Canadian unions which represent its crews, and in violation of the Canadian law discharge the crews and replace them with crews provided by S. I. U. of Canada (R. 26).

Some insight into the background of the Canadian jurisdictional dispute and the real purpose behind the picketing can be gained from a consideration of the Report of The Honourable T. G. Norris, a Judge of the Court of Appeal of British Columbia, Canada, who was appointed by the Minister of Labour of Canada in July, 1962, to inquire into and report on the disruption of shipping on the Great Lakes System. Justice Norris' Report, consisting of over 600 pages, was released on July 6, 1963, and can best be summarized through the introductory paragraphs to his "CONCLUSIONS," page 296, as follows:

> "In the detail of the recent happenings, the real issue at this time is likely to be lost sight of. A proper perspective should be maintained. It should always be remembered that this strife, all this lawlessness—the unlawful picketing, the intimidation and violence in Canada and the United States, all the litigation in Canada and the United States, the international difficulty requiring the attention of the heads of two great nations—is not an effort to right any wrong nor to assist seamen, but is part of an irresponsible campaign to maintain one rapacious and violent man, Banks, in power as a dictator.
>
> "The combined effort of the unions supporting Banks is to hold for him monopoly control of all the seamen and over all the shipping companies, and consequently over all maritime trade on the Great Lakes and St. Lawrence River System.
>
> "Banks obtained his absolute control in his union through the misuse of union funds, the hiring halls, the D. N. S. and R. O. C. cards, and the Welfare Plan. This has been fully established. He and his union operated the Vacation Pay Plan unlawfully and contrary to the directions of the Minister of Labour. The Maritime Appeal Board set up by Banks is not useful for the purpose that it is alleged to serve.
>
> "Under Banks' control, the Seafarers' International Union of Canada becomes less and less a

trade union and more and more of a mere hiring agency, operated by Banks through fees extracted from the wages of the crew members supplied through the hall. An effort is now being made with regard to vacation pay to bring it under the sole control of the union, as is indicated in Schedule 51 hereto. If this trend continues, it is within the bounds of reasonable possibility that the next step will be an effort to have the seamen's pay paid to the union for distribution. Thus Banks' control over the maritime labour force would become absolute. He would have a monopoly as a supplier of labour and his opportunities for the exploitation of the seamen and their funds would be complete."

As a matter of fact, hardly a day passes but that the public press carries a new story of unlawfulness or violence stemming from the Canadian jurisdictional dispute. At the time of this writing consideration is being given by the Prime Minister of Canada to calling the Canadian Parliament into special session to enact legislation placing all Canadian maritime unions under government trusteeship as recommended by Justice Norris.

Earlier this summer the tracks of the Wabash Railroad Company leading into The Andersons, the grain elevator involved in the instant case, were blown up, not once but twice. Last month the side of one of the Canadian shipowner's ships was blown out in Chicago. Just a few days ago eight rifle shots were fired into the residence of one of the partners of The Andersons. Last night's press quoted United States District Judge Parsons of Chicago as characterizing the S. I. U. as a "violent" organization which is "creating a dastardly situation between the United States and Canada."

Regardless of this, and dozens of other such incidents, however, the petitioners will have their opportunity to prove that they were no part of a conspiracy to further

the unlawful aims of Banks and the S. I. U. of Canada when the contempt charges are heard on the merits, at which time they will be afforded the hearing required by *In Re Green*, 369 U. S. 689 (1962), for the fact is that the petitioners have neither been tried for nor convicted of contempt; and the same is true with respect to the picketing American unions who will have their opportunity to show that their activities were but an exercise of free speech and the right to protest when the basic litigation is heard. Thus, any constitutional claim of freedom of speech at this stage is premature and should await the evidence in the trial court.

CONCLUSION.

We respectfully submit that the petitioners have failed to show "special and important reasons" for the allowance of their petition, or that the case involves questions of public interest which have not already been resolved fully by this Court.

The judgment of the Supreme Court of Ohio was and is correct. It is simply the application of the law as clearly and recently expressed by this Court in the *Benz*, *Sociedad Nacional* and *Incres* cases. Therefore, the petition should be denied.

Respectfully submitted,

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